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**JUL 20 2009**

**OFFICE OF PETITIONS**

ALBEMARLE CORPORATION  
PATENT DEPARTMENT  
451 FLORIDA STREET  
BATON ROUGE LA 70801

In re Application of :  
Howarth, et al. : LETTER REGARDING PTA  
Application No. 10/688,125 :  
Filed: October 17, 2003 :  
Atty. Dkt. No.: : SU-7155-C :

This letter is in response to the "STATEMENT REGARDING PATENT TERM ADJUSTMENT," filed March 3, 2009. The Office thanks applicants for their good faith and candor in bringing this to our attention.

The Determination of Patent Term Adjustment mailed December 17, 2008 indicated that the above-identified application was entitled to a patent term adjustment ("PTA") of 660 days. Applicants indicate that there may be an error in the calculation of the number of days in the Patent Term Adjustment stated in the Determination of Patent Term Adjustment mailed December 17, 2008. Applicants further state that "it is Applicants' understanding that the time between the filing of the Request for Continued Examination and the issuance of the patent should not be counted in the calculation of Patent Term Adjustment, and appears to have been added to the Adjustment in the present application. In addition, Terminal Disclaimers, which may affect the Adjustment, have been filed in this application."

**The correct Patent Term Adjustment ("PTA") at the time of the allowance is 611 days.**

As uncontested by applicants, as of the time of allowance, the application is entitled to an adjustment of 660 days.

However, a review of the record reveals that the Office neglected to assess a reduction of 49 days in connection with the Information Disclosure Statement (IDS) filed February 15, 2008. In accordance with 37 CFR 1.704(c)(8), the reduction commenced December 29, 2007, the day after the date that the initial reply (Request for Continued Examination) was filed, and ended February 15, 2008, the date that the IDS was filed.

Accordingly, as of the time of allowance, the application is entitled to an adjustment of 611 days (adjustments totalling 660 days less reduction of 49 days).

Applicants further advise that of terminal disclaimers filed in the instant application. The filing of the terminal disclaimer has no effect on the determination of patent term adjustment *set forth* on any patent issuing from this application. As set forth at 35 U.S.C. 154(b)(2)(B):

No patent the term of which has been disclaimed beyond a specified date may be adjusted under this section beyond the expiration date specified in the disclaimer.

Moreover, 37 CFR § 1.703(g) provides that:

No patent, the term of which has been disclaimed beyond a specified date, shall be adjusted under § 1.702 and this section beyond the expiration date specified in the disclaimer.

However, the provisions of § 154(b), for adjustment due to examination delay, apply to original applications, other than designs, filed on or after May 29, 2000. The Office calculates patent term adjustment for examination delay in all eligible applications. In calculating the patent term adjustment, the Office does not differentiate between applications that have terminal disclaimers and those that do not. Further, the Office does not undertake the burdensome task of reviewing every application with a terminal disclaimer to determine if the patent term adjustment accorded would adjust the term beyond the expiration date specified in the disclaimer.

Rather, on issuance of the application, in compliance with 35 U.S.C. 154(b) and 37 CFR § 1.703(g), it is indicated in the patent that the patent term adjustment indicated therein is subject to any disclaimer. Moreover, it is also stated therein that the patent is subject to a terminal disclaimer.

As applicants are advising us of a potential error in providing too much patent term adjustment in this application, no fee is due in connection with this matter.

There is no indication that the petition is signed by a registered patent attorney or patent agent of record. However, in accordance with 37 CFR 1.34, the signature of Ms. Drabnis appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that she is authorized to represent the particular party in whose behalf she acts. If, Ms. Drabnis desires to receive correspondence regarding this file, the appropriate power of attorney documents must be submitted. A courtesy copy of this decision is being mailed to Ms. Drabnis, the petitioner herein. However, until otherwise instructed, all future correspondence regarding this application file will be directed solely to the above-noted correspondence address of record.

The patent term adjustment indicated in the patent will include any additional patent term accrued pursuant to §§ 1.702(a)(4) and 1.702(b).

This application is being forward to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3205.

A handwritten signature in black ink, appearing to read 'AMB', with a long horizontal flourish extending to the right.

Alesia M. Brown  
Petitions Attorney  
Office of Petitions

Enclosure: Copy of Adjustment PAIR Calculation

CC: Mary H. Drabnis  
McGlinchey Stafford PLLC  
4703 Bluebonnet Blvd.  
Baton Rouge, LA 70809

Day : Saturday  
Date: 7/18/2009

# **PALM INTRANET**

Time: 07:52:37

## **PTA Calculations for Application: 10/688125**

Application Filing Date:	10/17/2003	PTO Delay (PTO):	660
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	0
Post-Issue Petitions:	0	Total PTA (days):	611
PTO Delay Adjustment:	-49		

## **File Contents History**

Number	Date	Contents Description	PTO	APPL	START
73	07/18/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		49	
67	12/17/2008	MAIL NOTICE OF ALLOWANCE			
66	12/08/2008	ISSUE REVISION COMPLETED			
65	12/02/2008	ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING			
64	12/02/2008	DOCUMENT VERIFICATION			
63	12/02/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
62	12/02/2008	NOTICE OF ALLOWABILITY			
61	11/18/2008	DATE FORWARDED TO EXAMINER			
60	11/13/2008	AMENDMENT AFTER FINAL REJECTION			
59	10/30/2008	MAIL FINAL REJECTION (PTOL - 326)	3		55
58	10/27/2008	FINAL REJECTION			
57	10/23/2008	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
56	08/09/2008	DATE FORWARDED TO EXAMINER			
55	06/27/2008	RESPONSE AFTER NON-FINAL ACTION			
54	04/01/2008	MAIL NON-FINAL REJECTION			
53	03/28/2008	NON-FINAL REJECTION			
52	02/15/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
51	02/15/2008	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
48	03/19/2008	DATE FORWARDED TO EXAMINER			
47	12/28/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
46	03/19/2008	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			

45	02/15/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
44	12/28/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
43	12/28/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
42	12/28/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
41	12/28/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
40	12/22/2007	FINISHED INITIAL DATA CAPTURE			
39	10/12/2007	EXPORT TO INITIAL DATA CAPTURE			
38	10/04/2007	MAIL NOTICE OF ALLOWANCE			
37	10/01/2007	ISSUE REVISION COMPLETED			
36	10/01/2007	DOCUMENT VERIFICATION			
35	10/01/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
34	10/01/2007	CASE DOCKETED TO EXAMINER IN GAU			
33	09/21/2007	NOTICE OF ALLOWABILITY			
32	09/19/2007	PARALEGAL TD ACCEPTED			
31	09/19/2007	DATE FORWARDED TO EXAMINER			
30	09/18/2007	AMENDMENT AFTER FINAL REJECTION			
29	07/05/2007	MAIL FINAL REJECTION (PTOL - 326)			
28	07/03/2007	FINAL REJECTION			
27	05/01/2007	PARALEGAL TD ACCEPTED			
26	04/28/2007	DATE FORWARDED TO EXAMINER			
25	04/26/2007	RESPONSE AFTER NON-FINAL ACTION			
24	01/26/2007	MAIL NON-FINAL REJECTION			
23	01/22/2007	NON-FINAL REJECTION			
22	03/15/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
21	03/31/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
20	11/07/2006	DATE FORWARDED TO EXAMINER			
19	10/27/2006	RESPONSE TO ELECTION / RESTRICTION FILED			
18	10/05/2006	MAIL RESTRICTION REQUIREMENT	657		-1
17	09/30/2006	REQUIREMENT FOR RESTRICTION / ELECTION			
16	03/31/2005	REFERENCE CAPTURE ON IDS			
15.7	03/31/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

15	03/31/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	04/05/2005	CASE DOCKETED TO EXAMINER IN GAU			
13	10/25/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
12	03/15/2004	REFERENCE CAPTURE ON IDS			
11.7	03/15/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	03/15/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10	10/25/2004	CASE DOCKETED TO EXAMINER IN GAU			
9	04/14/2004	CORRESPONDENCE ADDRESS CHANGE			
8	01/21/2004	APPLICATION RETURN FROM OIPE			
7	01/21/2004	APPLICATION RETURN TO OIPE			
6	01/21/2004	APPLICATION DISPATCHED FROM OIPE			
5	01/21/2004	APPLICATION IS NOW COMPLETE			
4	01/14/2004	CLEARED BY OIPE CSR			
3	01/14/2004	CASE CLASSIFIED BY OIPE			
2	11/25/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	10/17/2003	INITIAL EXAM TEAM NN			

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#### EXPLANATION OF PTA CALCULATION

#### EXPLANATION OF PTE CALCULATION

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